

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	CG Docket No. 02-278
)	
Rules and Regulations Implementing)	
)	
the Telephone Consumer Protection)	
)	
Act of 1991)	

**REPLY COMMENT TO THE NOTICE OF
THE AMERICAN RESORT DEVELOPERS ASSOCIATION**

I respectfully submit this Reply Comment to the Notice filed with the Commission by the American Resort Developers Association ("ARDA") in regard to the Commission's Report and Order adopted June 26th, 2003. [In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Report and Order, FCC Rcd., 03-153 (F.C.C. Jul 03, 2003), 68 FR 44144-01.]

The ARDA is attempting to carve out an exemption for prerecorded telephone solicitations for the Resort industry. The ARDA suggests to the Commission that information only prerecorded messages are not advertisements. It is ludicrous to suggest that a prerecorded telephone solicitation, which intent is to **sell property**, is not a telemarketing call.

As such, I am submitting for the record the Complaint and Final Judgment and Permanent Injunction in The People of California v. Trendwest Resorts Inc. as relevant to this proceeding and as an example of why the ARDA's Petition for Reconsideration should be and must be denied.

Respectfully submitted,

_____/s/_____

Joe Shields
Texas Government & Public Relations Spokesperson for Private Citizen Inc.
16822 Stardale Lane
Friendswood, Texas 77546

BILL LOCKYER,
Attorney General
HERSCHEL T. ELKINS,
Senior Assistant Attorney General
ALBERT SHELDEN,
Supervising Deputy Attorney General
MICHAEL B. HUGHES, State Bar # 108409
Deputy Attorney General,
300 South Spring Street, Suite 5212
Los Angeles, CA 90013

JAMES P. FOX, DISTRICT ATTORNEY
County of San Mateo, State of California
State Bar No. 45169
400 County Center, 3rd Floor
Redwood City, California 94063
By: **Chuck Finney, Deputy**

Attorneys for Plaintiff,
The People of the State of California

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN MATEO

THE PEOPLE OF THE
STATE OF CALIFORNIA,

Plaintiff,

v.

TRENDWEST RESORTS, INC.,

Defendant.

CASE NO.

COMPLAINT FOR INJUNCTION,
CIVIL PENALTIES AND OTHER
EQUITABLE RELIEF

—
Plaintiff, the People of the State of California (“Plaintiff” or the “People”), by and
through Bill Lockyer, Attorney General of the State of California, and James P. Fox,
District Attorney of the County of San Mateo, on information and belief alleges the
following:

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I.

1 **JURISDICTION**

2 1. The authority to bring this action is derived from Business and Professions
3 Code Sections 17204, 17206, 17535 and 17536.

4 2. Defendant, at all times mentioned herein has transacted business within and
5 from the County of San Mateo and throughout the State of California. The violations of
6 law hereinafter described have been and are now being committed within and from the
7 County of San Mateo and elsewhere within the State of California.

8 **II.**

9 **DEFENDANT**

10 3. Trendwest Resorts, Inc., (hereinafter, "Trendwest") is and at all relevant
11 times mentioned herein was a corporation registered to do business in the State of
12 California, having filed with the Secretary of the State of California, under number
13 C16447560, and has CSC - Lawyers Incorporating Service, 2730 Gateway Oaks Drive,
14 Ste. 100, Sacramento, CA 95833, as its registered agent for service of process in the state.
15 Defendant's principal office is in Redmond, Washington.

16 4. Defendant markets and sells timeshare and vacation contracts, and provides,
17 furnishes, contracts for, arranges, or advertises that it can or may arrange, or has
18 arranged, wholesale or retail air or sea transportation. As such, Defendant is subject to
19 Department of Real Estate (hereinafter, "DRE") laws and regulations and to the laws
20 affecting a "seller of travel," as defined in Business and Professions Code section
21 17550.1.

22 **III.**

23 **NATURE OF DEFENDANT'S BUSINESS**

24 5. Defendant Trendwest markets and sells timeshare interests and related
25 vacation products, goods and services. Defendant uses a variety of marketing methods to
26 get prospective purchasers to come to meetings at which Trendwest attempts to sell
27 timeshare interests and related vacation products, goods and services. Trendwest uses
28 oral and written methods to communicate its offers to consumers.

1 members of the public to attend a sales presentation for a timeshare product and related
2 services, has made untrue or misleading statements. The untrue or misleading statements
3 were disseminated before the public in California, orally and in writing. Defendant
4 Trendwest's communications, which violate Business and Professions Code Section
5 17500, include but are not limited to the following:

6 A. Informing consumers that they were finalists in winning a certain
7 promotional item or that they had already won a specific prize when such was not
8 true;

9 B. Misrepresenting to consumers the value of prizes, incentives, or
10 promotional items by stating that the incentives have a higher retail value than the
11 incentives actually have;

12 C. Misrepresenting to consumers the value and utility of promotional
13 incentives by offering the incentives without disclosing at the time of the offer all
14 of the terms, limitations or conditions which must be followed in order to utilize
15 the incentive;

16 D. Misrepresenting to consumers the nature of what is necessary to
17 receive a promotional incentive, gift or prize, by failing to state the requirement to
18 attend a sales presentation to obtain the promotional incentive;

19 E. Misrepresenting to consumers the nature of the vacation credits to be
20 purchased by failing to adequately disclose that the credits expire;

21 F. Misrepresenting to consumers the nature of the vacation credits
22 offered for sale, allowing the purchaser to believe the credits have a fixed value or
23 exchange rate, when the credits are actually subject to change in their valuation;

24 G. Misrepresenting to consumers the nature of a timeshare purchase as
25 having good value as a financial investment;

26 H. Misrepresenting to consumers the location of resorts or availability
27 of services;

28 I. Misrepresenting to consumers the quantity of vacation credits

needed to stay at a particular resort at a particular time or misrepresenting the quantity of vacation credits sufficient to obtain any other benefit or service;

J. Misrepresenting to consumers the ability or ease with which an owner may check the availability of a property or service, make a reservation, or exchange vacation credits;

K. Prior to the execution of any contract, misrepresenting to consumers the period of time that must elapse before a purchaser may use and/or make a reservation to stay at a resort or other facility, or use any other goods, service, or benefit;

L. Prior to the execution of any contract, misrepresenting to consumers the future annual cost of participating in an exchange program and/or the cost of annual maintenance and association dues;

M. Misrepresenting to the consumer, by failing to adequately disclose, that part of the timeshare contract involves a negative option contract;

N. Representing that an offered "reduced" price of a timeshare interest (vacation credits) may only be accepted at the time of the current sales presentation, when such was not true; and

O. Misrepresenting to the consumer that Trendwest was not responsible for verbal representations made by its agents.

P. Misrepresenting to consumers the estimated length of the sales presentation they are scheduled to attend.

12. Defendant knew, or by the reasonable exercise of care should have known, that the statements or omissions of material fact set forth in paragraph 11 above were untrue or misleading at the time such statements were made.

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V.

1 **SECOND CAUSE OF ACTION**

2 **Acts of Unfair Competition in Violation of**
3 **Business and Professions Code Section 17200**
4 **(By Plaintiff Against Defendant)**

5 13. Plaintiff incorporates by reference paragraphs 1 through 12 of this
6 complaint as though fully set forth herein.

7 14. Within four years prior to the filing of this complaint, Defendant Trendwest
8 engaged in the following acts, among others, of unfair competition as defined in Business
9 and Professions Code section 17200:

10 A. Using and offering a gift, prize, or promotional incentive in an
11 untrue or misleading manner, in violation of Business and Professions Code
12 sections 17537, 17537.1 and 17537.2;

13 B. Offering a promotional incentive without disclosing all of the terms
14 and conditions of the offer, in violation of Business and Professions Code sections
15 17537.1 and 17537.2;

16 C. Offering a promotional incentive without sending the required
17 written confirmation of the offer, in violation of Business and Professions Code
18 sections 17537.1;

19 D. Offering a promotional incentive without disclosing that a certificate,
20 coupon, or rain-check redeemable for fulfillment for goods and/or services will be
21 provided as a promotional incentive, in violation of Business and Professions Code
22 Sections 17537.1(c), (d), or (e);

23 E. Failing to disclose prior to the execution of any contract or offer, in
24 clear and conspicuous language, that accrued vacation credits are subject to
25 expiration if not used within a stated period of time;

26 F. Failing to disclose prior to the execution of any contract or offer,
27 that vacation credit valuations and redemption schedules are subject to adjustment
28 up or down, and that an association decision could result in a diminution of

1 vacation credit values;

2 G. Stating that a timeshare purchase constitutes a financial investment;

3 H. Failing to provide to WorldMark members the easy ability for an
4 owner to check the availability of a property or service, or make a reservation or
5 exchange vacation credits, when having represented such existed;

6 I. Failing to adequately disclose, prior to the execution of any contract,
7 the period of time that must elapse before a purchaser may use and/or make a
8 reservation to stay at a resort or other facility, or use any other goods, service, or
9 benefit;

10 J. Failing to adequately disclose, prior to the execution of any contract,
11 the annual cost of participating in an exchange program and/or the cost of annual
12 maintenance and association dues, when applicable;

13 K. Failing to adequately disclose to the consumer the expected costs for
14 initial and renewal terms and to obtain the express written authorization from the
15 consumer for any purchase, subscription or enrollment which Defendant arranges
16 that results in automatic charging or billing of initial or periodic amounts to the
17 consumer;

18 L. Selling products, including a trial program with a rebate, without the
19 required authorization from the Department of Real Estate;

20 M. Failing to post the Public Report in a conspicuous and unobstructed
21 manner where Defendant is selling timeshare interests, in violation of
22 Section 11018.1(b) of the Business and Professions Code;

23 N. Failing to adequately inform prospective purchasers that he or she
24 can take as much time as he or she requires in order to read the Public Report and
25 any and all other documents necessary to consummate a sale before leaving the
26 premises or signing a contract or not allowing prospective purchasers the time and
27 opportunity to do so;

28 O. Attempting to disclaim responsibility for the verbal representations

1 made by its agents;

2 P. Failing to adequately disclose the consumer's right of rescission, in
3 violation of Section 11024 of the Business and Professions Code;

4 Q. Failing to provide to consumers all of the procedures necessary to
5 effectively cancel the purchase and failing to fully and promptly honor the
6 consumer's right of rescission when consumers properly exercised their right of
7 rescission;

8 R. Acting as a seller of travel within the definition of Business and
9 Professions Code Section 17550.1, and receiving money or other valuable
10 consideration, without being registered under Business and Professions Code
11 Section 17550 et seq;

12 S. Acting as a seller of travel within the definition of Business and
13 Professions Code Section 17550.1, but failing to give the disclosures required by
14 Business and Professions Code Section 17550 et seq;

15 T. Failing to comply with the requirements of any applicable federal or
16 California law relating to a "do not call list," including but not limited to the
17 requirements to forbear from making calls or failing to comply with a consumer's
18 request to place the consumer's name and number on the "do not call list";

19 U. Using telephonic marketing methods unlawful in California, such as
20 use of an automatic dialing device without an unrecorded introduction;

21 V. Offering as a promotional incentive any travel certificate or coupon
22 which will not be readily redeemed without the consumer paying for an upgrade at
23 additional cost to the consumer;

24 W. Misleading consumers as to the estimated length of the sales
25 presentation they are scheduled to attend, in violation of Business and Professions
26 Code section 17537.1;

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28 X. Having a consumer execute a contract in a language other than a

1 language in which the consumer appears to be fluent, and other than the language
2 in which material portions of the sales presentation was given;

3 Y. Failing to investigate consumer complaints which allege unlawful
4 business practices purportedly made during the solicitation, sales presentation, or
5 at any time within the applicable cancellation period, and to take appropriate
6 corrective action;

7 Z. Contacting a consumer in violation of applicable debt collection laws
8 or any bankruptcy orders;

9 AA. Allowing sales agents to continue a sales presentation, over the
10 objections of the consumer, and by allowing sales agents to follow a consumer
11 outside of the sale presentation building to the consumer's car or residence; and

12 BB. Making those misrepresentations in violation of Business and
13 Professions Code section 17500 as alleged in paragraph 11 of the First Cause of
14 Action, which are incorporated herein by this reference as though fully set forth.

15 **VI.**

16 **PRAYER**

17 WHEREFORE, plaintiff prays for judgment as follows:

18 1. A permanent injunction be issued pursuant to Business and Professions
19 Code Sections 17203 and 17535, and the Court's inherent equity powers, restraining and
20 enjoining the Defendant Trendwest, its agents, employees, and representatives, and all
21 persons acting under, by, through or on behalf of Defendant, who have actual or
22 constructive notice of this Permanent Injunction from engaging in or performing directly
23 or indirectly any or all of the following:

24 A. Making any of the misrepresentations set forth in the First Cause of
25 Action, or any other misrepresentation proscribed by Business and Professions
26 Code section 17500;

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28 B. Doing those acts of unfair competition described in the Second

1 Cause of Action, or performing any other act of unfair competition in violation of
2 Business and Professions Code section 17200.

3 2. Pursuant to Section 17536 of the Business and Professions Code, Defendant
4 Trendwest be assessed a civil penalty of two thousand five hundred dollars (\$2,500) for
5 each and every untrue or misleading representation made by them, according to proof at
6 the time of trial.

7 3. Pursuant to Section 17206 of the Business and Professions Code, Defendant
8 be assessed a civil penalty of two thousand five hundred dollars (\$2,500) for each act of
9 unfair competition in violation of section 17200 of the Business and Professions Code,
10 according to proof at the time of trial.

11 4. Plaintiff be given such other and further relief as the nature of this case may
12 require and this court deems proper to fully and successfully dissipate the effects of the
13 untrue and misleading representations and the acts of unfair competition alleged in this
14 complaint.

15 Dated: October 29, 2003

BILL LOCKYER,
Attorney General
HERSCHEL T. ELKINS,
Senior Assistant Attorney General
ALBERT SHELDEN,
Supervising Deputy Attorney General
MICHAEL B. HUGHES,
Deputy Attorney General

20
21 By: MICHAEL B. HUGHES, Deputy Attorney General
22 Attorneys for Plaintiff,
People of the State of California

23
24 Dated:

JAMES P. FOX, District Attorney

25
26 By: CHUCK FINNEY, Deputy District Attorney
27 Attorneys for Plaintiff,
28 People of the State of California

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF SAN MATEO

10 PEOPLE OF THE STATE OF
11 CALIFORNIA,

12 Plaintiff,

13 vs.

14 TRENDWEST RESORTS, INC.,

15 Defendant.
16

CASE NO.

**FINAL JUDGMENT AND
PERMANENT INJUNCTION**

17 Plaintiff, the People of the State of California, appearing through its attorney, Bill
18 Lockyer, Attorney General of the State of California, by Michael B. Hughes, Deputy
19 Attorney General, and James P. Fox, District Attorney of the County of San Mateo, by
20 Chuck Finney, Deputy District Attorney, and Trendwest Resorts, Inc. (hereinafter,
21 “Defendant”), appearing through its counsel, Cox Castle & Nicholson LLP, by
22 Frederick H. Kranz, Esq. and D. Scott Turner, Esq., having stipulated that this Final
23 Judgment and Permanent Injunction (“Judgment”) may be entered by a judge or
24 commissioner of the San Mateo County Superior Court without the taking of evidence,
25 without trial or adjudication of any issue of fact or law, without this Judgment
26 constituting any admission by any party concerning any issue of law or fact, and
27 without this Judgment constituting any admission of liability or wrongdoing by
28 Defendant; and good cause appearing therefrom,



1 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

2 1. This Court has jurisdiction of the subject matter hereof and the parties
3 hereto.

4 2. The injunctive provisions of the Judgment are applicable to Defendant, its
5 successors, officers, agents, employees, servants and representatives, and to all persons
6 acting by, through, under or on behalf of Defendant, and to all persons acting in concert
7 with or participating with Defendant with actual or constructive knowledge of this
8 Final Judgment and Permanent Injunction.

9 3. Pursuant to California Business and Professions Code §17203 and §17535,
10 Defendant, said individuals, said corporations, and said entities and their successors set
11 forth in paragraph 2 above are hereby permanently enjoined and restrained from
12 directly or indirectly doing any of the following:

13 A. Failing to comply with the requirements of any applicable federal
14 or California law relating to a “do not call list,” including but not limited to the
15 requirements to forbear from making calls or having others make calls on
16 Defendant’s behalf to those on the “do not call list,” and complying with a
17 consumer’s request to place the consumer’s name and number on the “do not call
18 list.”

19 B. Using telephonic marketing methods unlawful in California, such as
20 use of an automatic dialing device without an unrecorded introduction, or failing
21 to have the natural person giving the introduction to first disclose Defendant’s
22 name as the business on whose behalf the call is being made, Defendant’s address
23 or telephone number in a clear and conspicuous fashion, and obtain the consent
24 of the person called to listen to a prerecorded message.

25 C. Informing consumers that they are finalists in winning a certain
26 promotional item or have already won a specific prize, unless it is true.

27 D. Offering as a promotional incentive any travel certificate or coupon
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1 redeemable for air transportation, hotel accommodations, car rental, and/or other
2 travel-related service which does not allow the recipient to pick a departure or use
3 date by calling a telephone number, other than a (900) number or other number
4 that imposes any charge to make the call other than the usual toll costs imposed
5 by the consumer's phone service provider.

6 E. Offering as a promotional incentive any travel certificate or coupon
7 redeemable for air transportation and/or hotel accommodations or other travel-
8 related service which entitles the recipient to a trip of a specified duration unless
9 Defendant states at the time of the offer that there are terms, limitations or
10 conditions which must be followed in order to utilize the incentive, and that the
11 details of the terms will be sent to the consumer in writing, to be received by the
12 consumer prior to leaving his or her home to attend the scheduled sales
13 presentation; the writing shall include the approximate times of the air
14 transportation's departure and return, if applicable, and all other material
15 conditions, including any limitations as to the dates or times available for use of
16 the incentive.

17 F. Offering as a promotional incentive any travel certificate or coupon
18 redeemable for fulfillment wherein, prior to the time when the consumer has a
19 confirmed reservation for a date accepted by the consumer, the consumer is told
20 about any upgrades by the offeror or a business fulfilling the incentive. "Told
21 about any upgrades" as used herein shall mean an offer or discussion, prior to the
22 time when the consumer has accepted a confirmed reservation for a date
23 requested by the consumer, of any additional travel services or travel options to
24 consumers, beyond that which is covered in the incentive given to the consumer,
25 where such additional services or options are said to be available for additional
26 consideration to be paid by the consumer.

27 G. Making any material misrepresentations proscribed by, or failing to
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1 disclose all requirements required by Business and Professions Code §§ 17537.1
2 and 17537.2, including, without limitation, misrepresenting or failing to disclose
3 that a consumer must attend a sales presentation to obtain a prize or promotional
4 item.

5 H. Unless the promotional incentive is already given to the consumer
6 prior to the conclusion of the estimated duration of the sales presentation, as
7 previously set forth in writing as required by Business and Professions Code
8 §17537.1, failing to inform a person verbally and in writing immediately prior to
9 the beginning of a sales presentation that at the conclusion of the estimated
10 duration of the sales presentation, the consumer is free to terminate the sales
11 presentation upon the expiration of the estimated duration of the sales
12 presentation, and immediately collect the promised incentive.

13 I. Failing to deliver the offered promotional incentive to said person
14 upon request at the conclusion of the length of time for the sales presentation
15 which was previously set forth in the writing required by Business and
16 Professions Code §17537.1.

17 J. Failing to disclose in violation of Business and Professions Code
18 Sections 17537.1(c), (d), or (e), that a certificate, coupon, or rain-check
19 redeemable for fulfillment for goods and or services will be provided as a
20 promotional incentive, if that is the case.

21 K. Failing to disclose, when applicable, prior to the execution of any
22 contract or offer, in clear and conspicuous language, that accrued vacation credits
23 are subject to expiration if not used within a stated period of time, that vacation
24 credit valuations and redemption schedules are subject to adjustment up or down,
25 that an association decision could result in a diminution of vacation credit values,
26 and that an adjustment in the valuation of vacation credits or redemption costs
27 could result in an increase or decrease in the redeemable value of the number of
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1 vacation credits purchased.

2 L. Stating that a timeshare purchase constitutes a financial investment.

3 ///

4 M. Materially misrepresenting the location of resorts or availability of
5 services.

6 N. Materially misrepresenting the value of vacation credits needed to
7 stay at a particular resort at a particular time or materially misrepresenting the
8 quantity of vacation credits sufficient to obtain any other benefit or service.

9 O. Materially misrepresenting the ability or ease with which an owner
10 may check the availability of a property or service, or make a reservation or
11 exchange vacation credits.

12 P. Failing to clearly and conspicuously disclose, verbally and in
13 writing, prior to the execution of any contract, the period of time that must elapse
14 before a purchaser may use and/or make a reservation to stay at a resort or other
15 facility, or use any other goods, service, or benefit.

16 Q. Offering in violation of any California statute, regulation, or
17 permit, any rebate or credit through purchase of Explorer Program contractual
18 rights or any other such "short term product" program offered by or through
19 Defendant.

20 R. Failing to clearly and conspicuously disclose verbally and in
21 writing, prior to the execution of any contract, the annual cost of participating in
22 an exchange program and/or the cost of annual maintenance and association dues,
23 when applicable.

24 S. Failing to fully disclose to the consumer the expected costs for
25 initial and renewal terms and to obtain the express written authorization from the
26 consumer for any purchase, subscription or enrollment which Defendant arranges
27 that results in automatic charging or billing of initial or periodic amounts to the
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1 consumer.

2 T. Representing that an offered “reduced” price of a timeshare interest
3 (vacation credits) may only be accepted at the time of the current sales
4 presentation, unless true.

5
6 U. Failing to inform, verbally and in writing, any prospective
7 purchaser that he or she can take as much time as he or she requires in order to
8 read the Public Report and any and all other documents necessary to consummate
9 a sale before leaving the premises or signing a contract, and not allowing, upon
10 request, such prospective purchaser the time and opportunity to do so. If the
11 prospective purchaser requests that he or she be able to return the next business
12 day to complete the review of such documents before signing, Defendant shall
13 accommodate such a request, and such return visit shall not disqualify the
14 prospective purchaser from receiving any price reduction or other incentive for
15 purchasing on the day of the scheduled sales presentation.

16 V. Setting forth in any written contract for the purchase of vacation
17 credits or the Explorer Program that Defendant will not be responsible for verbal
18 representations made by its agents prior to the parties signing the contract or
19 during the applicable cancellation period.

20 W. Having a consumer execute a contract in a language other than a
21 language in which the consumer appears to be fluent, or in a language other than
22 in the language in which material portions of the sales presentation were given,
23 unless the consumer has an interpreter who is fluent in both in the language in
24 which the consumer appears to be fluent and in the oral and written language in
25 which material portions of the sales presentation were given.

26 X. Failing to provide each purchaser with the rescission notice
27 described in Section 11024 of the Business and Professions Code. The notice
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1 shall conform with applicable regulations of the California Department of Real
2 Estate as to form except that it shall extend to the purchaser the right to rescind
3 any contract resulting from the acceptance of an offer from Defendant until
4 midnight of no earlier than three business days (or such greater number of days as
5 required by law or permitted by contract) following the day on which the
6 purchaser executed the offer to purchase. The offer to purchase shall also contain
7 the following statement in immediate proximity to the space reserved for the
8 signature of the purchaser, in capitalized, bold letters in size at least equal to the
9 largest type exclusive of titles used in that document, but in type size no less than
10 10-point type, using at least 1.5 line spacing: "YOU, THE BUYER, MAY
11 CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF
12 THE" [either "THIRD" or any greater number of days provided by law or
13 contract] "BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION.
14 SEE THE NOTICE OF CANCELLATION FORM ATTACHED TO THE
15 FRONT PAGE OF THE CALIFORNIA PUBLIC REPORT FOR AN
16 EXPLANATION OF THIS RIGHT." Defendant shall provide to purchasers the
17 Notice of Rescission attached to the Public Report.

18 Y. Failing to provide to any person who contacts Defendant with a
19 request to cancel a purchase all of the procedures necessary to effectively cancel
20 the purchase.

21 Z. Failing to cancel a purchase upon the receipt of a valid timely
22 written Notice of Rescission. Defendant may not obtain from such person a
23 waiver or cancellation of the rescission.

24 AA. Failing to investigate reasonably within 45 days following receipt
25 of any complaint by a consumer which alleges an unlawful business practice or a
26 material misrepresentation during the solicitation, sales presentation, or at any
27 time within the applicable cancellation period, and to take appropriate corrective
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1 action.

2 BB. Failing to offer to a purchaser identified in subparagraph “AA,”
3 above, no later than 60 days following receipt of such complaint, a cancellation
4 of the purchase contract, a full refund of all monies paid, or other settlement
5 satisfactory to the consumer, and a reversal of any negative entry on a credit
6 report, in the event that Defendant finds that a material misrepresentation had
7 been made to the consumer.

8 CC. If a Defendant finds that a material misrepresentation has been
9 made to a consumer or an unlawful business practice has been committed, failing
10 to take appropriate remedial action, if any, with regard to the consumer and
11 failing to initiate appropriate corrective action against the person and business
12 that made the misrepresentation or committed the unlawful act, no later than
13 45 days following the determination that an unlawful act was committed.

14 DD. Contacting a consumer in violation of applicable debt collection
15 laws or any bankruptcy orders.

16 EE. Billing or charging a consumer without the express written or oral
17 authorization, or authorization received electronically or telephonically from the
18 consumer to do so. No automatic or recurring charge or billing will be processed
19 without the written authorization from the consumer.

20 FF. Acting as a Seller of Travel as defined in Business and Professions
21 Code §17550.1 without fully complying with all of the statutory requirements of
22 the Seller of Travel Act, commencing at Business and Professions Code §17550.

23 GG. Failing to have the Public Report issued by the Department of Real
24 Estate posted in a place conspicuous to the public; materially altering the
25 approved form of the Public Report, obstructing the first page of the Public
26 Report, or in any other manner materially detracting from a conspicuously posted
27 Public Report, or otherwise violating Section 11018.1(b) of the Business and
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1 Professions Code.

2 HH. Allowing any of Defendants' agents to go to a consumer's car or
3 residence, or to otherwise follow a consumer outside of the sale presentation
4 building, without the consumer's express permission.

5 II. Failing to cancel a purchase contract, and to fully refund all monies
6 paid and to reverse any negative entry on a credit report, if, during a period of
7 one (1) year after the date of purchase, or occupancy by the consumer of a
8 WorldMark resort unit, whichever occurs latter, the consumer alleges that
9 Defendant made an oral misrepresentation during the consumer's statutory
10 rescission period under Section 11024 of the Business and Professions Code that
11 dissuaded the consumer from exercising his or her rescission right, unless
12 Trendwest shows that the allegation is not true.

13 4. Pursuant to Business and Professions Code §17203 and §17535,
14 Defendant shall, within ninety (90) days following notice of entry of this Judgment,
15 offer restitution to any California resident who (a) executed a timeshare purchase
16 contract between March 31, 2001 through the date of entry of this Judgment and (b) by
17 E-mail, orally (whether by telephone or in person) or in writing (whether by mail, e-
18 mail, telegraph, or by fax) requested cancellation of said contract or a refund within
19 forty-five (45) days after executing that contract. For purposes of this paragraph,
20 "restitution" shall mean a rescission of the contract, a full refund of all monies paid,
21 and a reversal of any negative credit report filed. In order to determine who is entitled
22 to rescission and refunds, Defendant shall make all reasonable efforts to search their
23 records, including memorializations, if any, of telephone or E-mail contacts, to identify
24 these persons. Any person who claims that he/she attempted to make an oral
25 cancellation of his/her contract shall, in the event Defendant is unable to locate a
26 written record of such contact, have the burden of producing verifiable evidence of
27 his/her claim. Defendant shall be entitled to an offset against the refund in an amount
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1 equal to the fair market value of the timeshare accommodations used by the purchaser
2 prior to the date on which the refund is issued. Within seventy-five (75) days
3 following entry of this Judgment, Defendant shall provide to the Office of the Attorney
4 General, 300 South Spring Street, Los Angeles, California 90013, Attention Michael B.
5 Hughes, Deputy Attorney General, a list including the name, address, and work and
6 home telephone numbers, if known, of all persons whom they have determined are
7 entitled to restitution under this provision. For purposes of this paragraph, those
8 entitled to restitution shall include those who either contacted Defendant directly in
9 writing, by E-mail, fax, phone call, telegraph, or in person, or who made written
10 complaints prior to the date of entry of this Judgment requesting rescission or a refund
11 to any law enforcement agency, department of consumer affairs, Department of Real
12 Estate or Better Business Bureau which in turn has forwarded copies of these
13 complaints to Defendant, and who notify Defendant in writing within 30 days after the
14 date of the offer of restitution, that the purchaser accepts Defendant's offer of
15 restitution. Defendant shall obtain approval from the Attorney General and the San
16 Mateo District Attorney for the form of the offer of restitution to be mailed to
17 consumers.

18 5. Pursuant to Business and Professions Code §17203 and §17535,
19 Defendant shall, within ninety (90) days following notice of entry of this Judgment,
20 offer restitution to any California resident who (a) executed an Explorer Program
21 purchase contract, and (b) as of the date of this Judgment, has not exercised his or her
22 rights under such Explorer Program purchase contract. For purposes of this paragraph,
23 "restitution" shall mean a rescission of the contract, a full refund of all monies paid,
24 and a reversal of any negative credit report filed. In order to determine who is entitled
25 to restitution, Defendant shall make all reasonable efforts to search their records,
26 including memorializations, if any, of telephone or E-mails contact, to identify these
27 persons. In addition to the foregoing, all purchasers of Explorer Program contract
28



1 rights but whose reservation is for a date commencing after the of entry of this
2 Judgment will be permitted to use their reservation at Defendant's expense. Defendant
3 shall, within one hundred twenty (120) days following notice of entry of this Judgment,
4 forward a list, including the name, address, and work and home telephone numbers, if
5 known, of all persons whom they have determined are entitled to restitution under this
6 provision under this paragraph to the Office of the Attorney General, 300 South Spring
7 Street, Los Angeles, California 90013, Attention Michael B. Hughes, Deputy Attorney
8 General. Defendant shall obtain approval from the Attorney General and the San
9 Mateo District Attorney for the form of the offer of restitution to be mailed to
10 consumers.

11 6. Within ninety (90) days following notice of entry of this Judgment, if and
12 when the Defendant is contacted by any California resident who executed a timeshare
13 purchase contract with Defendant prior to the date of entry of this Judgment and within
14 the applicable statute of limitations period from the date of execution of said timeshare
15 purchase contract, and said purchaser requests of the Defendant a rescission of his, her,
16 or its purchase agreement for said timeshare based upon an alleged failure to provide
17 clear and conspicuous disclosure of the purchaser's right of rescission as required by
18 Business and Professions Code section 11024, the Defendant shall immediately inform
19 said purchaser of the following in writing and shall follow the procedures stated below
20 if the purchaser elects to avail himself, herself, or itself of relief pursuant to this
21 paragraph of this Judgment:

22 a. That a written demand for rescission must be made by the purchaser
23 upon Defendant within one hundred ten (110) days from the date of entry of this
24 Judgment setting forth the reasons for such demand;

25 b. That the purchaser has the right to elect binding arbitration of his,
26 her, or its claim by giving Defendant a written demand for binding arbitration
27 within one hundred ten (110) days following notice of entry of this Judgment;
28



1 c. That binding arbitration shall be pursuant to the rules of the
2 American Arbitration Association and shall take place in the California county
3 where the purchaser resides;

4 d. That the filing fee for initiating the arbitration shall be paid entirely
5 by Defendant;

6 e. That each party shall be responsible for his, her or its own expenses
7 in connection with the arbitration, including attorney's fees;

8 f. Each party shall pay ½ of the arbitrator's fees, except that if the
9 arbitrator rules for the purchaser, Defendant shall be responsible for all of the
10 arbitrator's fees (arbitration fees can sometimes run into the thousands of dollars
11 and before you decide to choose arbitration you should decide whether
12 arbitration or following other civil legal remedies you may have available is
13 better for you in your situation); and

14 g. That the decision of the arbitrator shall be final and there shall be no
15 right of appeal.

16 7. Pursuant to Business and Professions Code §17536, Defendant shall pay
17 to the Office of the Attorney General the sum of one million two hundred fifty
18 thousand dollars (\$1,250,000). Of this amount, six hundred and twenty-five thousand
19 dollars (\$625,000) shall be for attorneys' fees and costs, and six hundred and twenty-
20 five thousand dollars (\$625,000) shall be assessed for civil penalties. Payment shall be
21 forwarded to the Office of the Attorney General, 300 S. Spring St., Los Angeles,
22 California 90013, Attn: Michael B. Hughes, Deputy Attorney General, at the time of
23 entry of this Judgment.

24 8. Pursuant to Business and Professions Code §17206 and §17536,
25 Defendant shall pay to the office of the San Mateo County District Attorney the sum of
26 two hundred twenty-five thousand dollars (\$225,000). Of this amount, fifty-five
27 thousand dollars (\$55,000) shall be for reimbursement of investigative expenses and
28 costs, and one hundred seventy thousand dollars (\$170,000) shall be assessed for civil



penalties. Payment shall be made to the Office of the San Mateo County District Attorney, 400 County Center, 3rd Floor, Redwood City, California, Attention: Chuck Finney, Deputy District Attorney, at the time of the entry of this Judgment.

9. Defendant shall pay to the California Department of Real Estate ("DRE") the sum of two hundred twenty-five thousand dollars (\$225,000) as reimbursement for legal and investigative costs incurred by the Department. This sum shall be made payable to the California Department of Justice which shall maintain such payment as a third party administrator on behalf of the DRE and shall deliver it to the DRE upon request received from the DRE. This payment shall be forwarded to the California Department of Justice, 300 S. Spring St., Los Angeles, California 90013, Attn: Michael B. Hughes, Deputy Attorney General, at the time of the entry of this Judgment.

10. For purposes of ensuring compliance with this Judgment, any duly authorized representative of the California Attorney General, upon giving reasonable notice, shall be permitted to inspect and copy all of Defendant's books, ledgers, accounts, correspondence, memoranda, contracts, banking records or other records or documents in the possession or under the control of Defendant which relate to any matters contained in this Judgment.

11. At any time, without the issuance of a subpoena duces tecum, Defendant shall make available to the Commissioner of the DRE or his or her representatives, within thirty (30) days following notice, Defendant's books, records and/or documents, which relate to a matter within the DRE's jurisdiction and which relate to the subject matter of this Judgment.

12. Should the DRE conduct an on-site inspection within a period of four (4) years after the entry of this Judgment to ensure compliance with this Judgment, Defendant shall reimburse to the DRE the reasonable cost of transportation, accommodations, and any other expenses incurred as a result of any on-site review, with the exception of salaries of DRE representatives conducting the inspection and/or



1 review and further limited to a maximum amount of twenty-five hundred
2 dollars (\$2,500) per in-state review and up to a maximum of ten thousand dollars
3 (\$10,000) for any out-of-state review, provided that under no circumstance shall the
4 amount payable by Defendant exceed more than thirty thousand dollars (\$30,000) in
5 any calendar year.

6 13. Pursuant to Sections 2800 and 2810.6 of Title 10, Chapter 6, California
7 Code of Regulations, Defendant, and each of them, shall immediately notify the DRE
8 of any material change affecting any of its timeshare subdivisions which are subject to
9 an outstanding Public Report.

10 14. Except for those matters covered by this Judgment, and as otherwise
11 expressly provided in this Judgment, nothing in any provision in this Judgment
12 precludes, limits or restricts the Real Estate Commissioner from invoking and following
13 any investigation, action, or remedy that she may bring under her own authority
14 (including, but not limited to, Business and Professions Code Sections 10071, 10081,
15 10148, 11014, and 11019).

16 15. Jurisdiction is retained for the purpose of enabling any party to this
17 Judgment to apply to the court at any time for such further orders and directions as may
18 be necessary and appropriate for the construction or carrying out of this Judgment, for
19 the modification of any of the injunctive provisions hereof, for the enforcement of
20 compliance herewith or for the punishment of violations hereof.

21
22
23 DATED: October 29, 2003

24 — JUDGE/COMMISSIONER
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